

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X (ECF)
BODO PARADY, as Special Administrator of the Estate 07 CIV 3640 (JCF)
of SABINA PARADI and BODO PARADY and MARY
MOORE, individually,

Magistrate Judge Francis
-all purposes-

Plaintiffs,

-against-

**AFFIRMATION IN OPPOSITION
TO MOTION TO BAR
TESTIMONY OF PLAINTIFFS'
MEDICAL EXPERTS:
STEVEN FLANAGAN, M.D.
AND ANGELO CANEDO, PhD.**

MICHAEL R. PHILLIPS,
Defendant,

-----X
MICHAEL V. KAPLEN, an attorney, being duly admitted to practice law
before the Courts of New York and the Federal District Court for the Southern
District of New York, affirms the following to be true under the penalties of
perjury.

1) I am a member of the law firm of DE CARO & KAPLEN, LLP, attorneys for
plaintiffs in the within action. I submit this affirmation and accompanying exhibits
in support of plaintiffs' opposition to defendant's motion to bar the testimony of
STEVEN FLANAGAN, M.D. and ANGELO CANEDO, PhD.

2) DR. FLANAGAN is a physician who is board certified by the American
Board of Physical Medicine and Rehabilitation and was recently appointed the
Medical Director of the Rusk Institute of Rehabilitation/ NYU Medical Center.
Until this appointment, DR. FLANAGAN was the Vice Chairman of the
Department of Rehabilitation Medicine, Mount Sinai School of Medicine and the
Medical Director and Chairperson of the Brain Injury Rehabilitation Program at

Mount Sinai Medical Center. He has served as a reviewer for the Traumatic Brain Injury Special Interest Group of the American Academy of Physical Medicine and Rehabilitation, serves on the medical advisory board of the Brain Injury Foundation, served as the Panel Chair of the Veteran's Administration Traumatic Brain Injury Rehabilitation, Research and Development Merit Review Panel, and the Vice Chair of the Brain Injury Special Interest Group of the American Academy of Rehabilitation Medicine.. His curriculum vitae is annexed as exhibit "A".

3) DR. FLANAGAN'S report dated November 26, 2007 is annexed as exhibit "B".

4) The affidavit of Dr. FLANAGAN in further support of his opinions is annexed as exhibit "C".

5) DR. CANEDO is a neuropsychologist with extensive experience in the diagnosis, care and treatment of those individuals who suffer from various levels of impaired degrees of consciousness. He holds a doctorate degree in psychology and currently serves as the Executive Director of the Brady Residence and Brady Day Program a comprehensive brain injury care program located at Jamaica Hospital Medical Center and is the Vice President of Jamaica Hospital Medical Center, Brookdale Medical Center and Flushing Hospital Medical Center. He has served as the administrator of the Department of Physical Medicine and Rehabilitation at Jamaica Hospital Medical Center. Among other positions he has held include program director of the Traumatic Brain Injury/Coma Recovery Program at Part Terrace Extended Care Center, the

Program Director of the Coma Recovery Program at Fairview Care Center and the Program Director of the Coma Recovery Program at Beach Terrace Extended Care Center. He has served on the Governor's Advisory Board on Head Injury, New York State Department of Health and the New York State Health Department, Head Injury Services Coordinating Council. He has authored numerous scientific papers on coma and coma recovery.

- 6) The curriculum vitae of DR. CANEDO is annexed as exhibit "D"
- 7) DR. CANEDO examined SABINA PARADI while she was a patient at COLUMBIA PRESBYTERIAN HOSPITAL. It was the opinion and conclusion of DR. CANEDO that at the time of his examination, June 19, 2007, SABINA PARADI "had the ability to feel pain and demonstrated same during the evaluation. Sabina also demonstrated evidence of being aware of particular stimuli in her environment. These indicators support my opinion that Sabina was minimally conscious."
- 8) DR. CANEDO'S report is annexed as exhibit "E"
- 9) Annexed as exhibit "F" are the following medical articles referred to by DR. FLANAGAN in his expert affidavit:

--"*Recommendations for Use of Uniform Nomenclature Pertinent to Patients With Severe Alterations in Consciousness*", American Congress of Rehabilitation Medicine, Arch Phys Med Rehabil. Vol 76 February 1995 pp 205-209

--"*The minimally conscious state: Definition and diagnostic criteria*". American Academy of Neurology, Neurology, 2002; 58; 349-353;

--Editorial Review: "*What is it like to be vegetative or minimally conscious?*"

Current Opinion in Neurology, 2007, 20:609-613.

10) The portions of the hospital records referred to by DR. FLANAGAN in his affidavit, are annexed as exhibit "G"

WHEREFORE, based upon the exhibits submitted and the accompanying memorandum of law in opposition to defendant's motion, the defendant's motion to bar the testimony of DRS. FLANAGAN and CANEDO should be denied in all respects.

Dated: Pleasantville, New York
August 14, 2008

DE CARO & KAPLEN, LLP

By: S/ *Michael V. Kaplen*

Michael V. Kaplen, Esq.
A member of the firm
Attorneys for Plaintiff
427 Bedford Road
Pleasantville, NY 10570
(914) 747 4410
6132-MVK

To:
James D. Butler, P.A.
591 Summit Avenue
Jersey City, N.J. 07306
Attorney for defendant Phillips

Richard W. Wedinger, Esq.
Barry, McTiernan & Wedinger
1024 Amboy Avenue
Edison, N.J. 08837
Personal attorney for defendant Phillips